

**REMARKS**

Reconsideration and allowance of this application are respectfully requested. Claims 1-7 are pending in the application. The rejections are respectfully submitted to be obviated in view of the remarks presented herein.

**35 U.S.C. § 103(a) Rejection - Claims 1 and 3-7:**

Claims 1 and 3-7 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Shimizu (JP-08022794) considered with Watanabe et al. (U.S. Patent Number 6,919,577; hereinafter “Watanabe”). The rejection is respectfully traversed.

An exemplary embodiment of the present invention, as recited by claim 1, relates to a minute pitch measuring method, comprising:

applying an electron beam to the surface of a sample while moving the sample relatively in a measuring direction; and  
acquiring an electronic signal from the surface of the sample to measure a minute pitch of said sample.

The Examiner asserts that Shimizu in view of Watanabe discloses a scanning electron microscope including particular elements in order to accurately produce an electron image of a sample by which a track pitch can be measured.

However, even assuming *arguendo* that such a scanning electron microscope can be achieved by Shimizu in view of Watanabe so as to measure a track pitch, there is no teaching or suggestion in either Shimizu or Watanabe, either alone or in combination, of “moving the sample

relatively in a measuring direction ... and acquiring an electronic signal from the surface of the sample to measure a minute pitch of said sample.”

Watanabe discloses measuring a height of a sample by detecting an image that is formed by a beam reflected by the sample. Specifically, a difference in height appears in the image formed by the beam. However, Watanabe does not teach or suggest moving the sample and acquiring a signal from the surface of the sample, thereby measuring a pitch of the sample, and thus Shimizu in view of Watanabe fails to teach or suggest the claimed elements.

At least by virtue of these aforementioned differences, the claimed invention distinguishes over Shimizu in view of Watanabe. As such, Shimizu in view of Watanabe fails to teach or suggest the claimed invention as recited by claim 1. Claim 4 is a related apparatus claim, and is distinguished over Shimizu in view of Watanabe for analogous reasons. Claims 3 and 5-7 are dependent claims including all of the elements of independent claims 1 and 4 respectively, which as discussed above, distinguish over Shimizu in view of Watanabe. Therefore, claims 3 and 5-7 are also distinguished over Shimizu in view of Watanabe for the aforementioned reasons as well as for their additionally recited features. Reconsideration and withdrawal of the rejection under 35 U.S.C. § 103(a) are respectfully requested.

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

RESPONSE UNDER 37 C.F.R. § 1.111  
U.S. Application No. 10/658,271  
Attorney Docket No. Q77426

Art Unit No. 2627

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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